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FIRST COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE FOURTEENTH MEETING

Held at the Parque Central, Caracas,
on Monday, 19 August 1974, at 4 p.m.

President:	Mr. ENGO	United Republic of Cameroon
Rapporteur:	Mr. MOTT	Australia

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ECONOMIC IMPLICATIONS OF SEA-BED EXPLOITATION (continued)

The CHAIRMAN said that, pursuant to a request by the United States representative, he would give his personal impressions of the debate held by the Committee on the economic implications of sea-bed exploitation. The major concern of the Committee, as he saw it, was to take important political decisions, first on the question of whether exploitation of the sea-bed resources would have adverse economic effects on the developing countries, producing or non-producing, and then on what provisions should be included in the future convention on the law of the sea to contain such effects. Two reports had been before the Committee, the UNCTAD report and the report of the United Nations Secretary-General. The UNCTAD report had categorically asserted that there would be adverse effects on the producing developing countries and had considered certain remedial measures, while the report of the Secretary-General, giving slightly different statistical data, also concluded that there would be adverse effects. A working paper submitted by the United States delegation had claimed to differ only slightly from the report of the Secretary-General.

He regarded it as significant that the developed countries had called for equal consideration to be given to the situation of developed countries which produced land-based minerals, because that demonstrated that the fears of developing countries were shared by some developed countries. He believed that there was agreement that no country - particularly developing country - should be exposed to the uncertainties of the future with regard to the effects of sea-bed mining. It had been suggested that land-based sources of certain metals, such as nickel, would have to increase production by 70 per cent in order to meet the total global demand forecast for 1985, and that positive effects of sea-bed mining should be balanced against adverse effects. However, it should be borne in mind that while any advantageous effects should be promoted, adverse ones should be reduced. Although one representative had questioned the argument that there would be adverse economic implications for developing countries, experts had been reluctant about challenging it. The uncertainties underlined by the debate could only increase the concern of a large section of the international community represented by the developing countries. With regard to the request that the plight of the developed countries should be considered, he assumed that, in accordance with the Declaration of Principles, adverse effects as a whole would be considered in context, the particular interest and needs of the developing countries being paramount.

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(The Chairman)

The second question before the Committee was how to meet the threat of adverse economic implications and ensure that adequate safeguards would exist in the institutions to be established to organize the exploitation of the common heritage of mankind for the benefit of mankind as a whole. The debate in the Committee had been useful in bringing out the importance of careful examination of all aspects of the problem. The Declaration of Principles was a positive statement of progressive ideas in favour of realistic global development promoted by benefits to be derived from international activity in the area. He believed that it would preclude measures that could have devastating effects on land-based producers of resources similar to those to be mined from the sea-bed or on other developing countries. It should also preclude any measures that would seriously prejudice steady global economic growth or that might cripple the profitable exploitation of the wealth of the area and the availability of the benefits deriving from it to the legitimate beneficiaries of the common heritage.

The Committee had to decide whether it would create a special organ within the authority to deal with the problem of possible adverse economic effects by keeping the problem under constant study and taking appropriate measures to meet any problems promptly if and when they occurred, or whether it would try to work out detailed provisions in an attempt to guarantee a solution of the problem of adverse effects. He felt the second alternative would be unacceptable to the majority of States represented on the Committee, as it was not a committee of technical experts and the debate had demonstrated the undesirability of trying to prescribe measures which it might not be possible to implement because of the imprecise nature of the data available. There was no point in adopting measures which might be too inflexible to adopt to unpredictable global developments with regard to the response capabilities of supply to demand in the future. He therefore concluded that the first alternative, which he had previously recommended, was the acceptable answer to the problem. The Australian delegation had proposed the creation of a specialized institution within the authority for that purpose which, he felt, should not present too many difficulties. Although the detailed resolution of inherent problems should be a matter for such an organ and not for the Committee, the suggestions that had been made were useful in drawing attention to the magnitude of the problems involved and providing preliminary commentary on possible approaches.

(The Chairman)

The Authority should be a strong authority with adequate powers to cope with any exigencies. The interests and needs of the international community at any given period in history could best be examined and protected in the light of contemporary data. In the current age, the plague of underdevelopment in the developing countries was a serious threat to the declared ideals of the current generation and to international peace. Their plight should therefore be dealt with as a major priority. The Conference, inspired by a consciousness of the need to create laws and institutions that would stand the test of time, must rise to the historic moment. Providing for the rise of new nations did not mean designing the collapse of older nations. The authority should have the capacity to identify the genuine problems of both developing and developed countries and the comprehensive powers necessary to take measures to combat the evils that threatened mankind in the future, making the fullest use possible of the tremendous benefits offered to man by the untold resources of ocean space.

REPORT OF THE CHAIRMAN OF THE INFORMAL MEETINGS

Mr. PINTO (Sri Lanka), speaking as Chairman of the Committee's informal meetings, said that the Committee had now held a total of 22 such meetings and since his last report at the 11th official meeting had discussed the second main issue before it, namely, conditions of exploration and exploitation. Having regard to the practical implications of the discussion for the work of the Committee in preparing draft treaty articles, it had been suggested that the following three conceptual approaches might be recognized: inclusion in the Convention of an elaborate set of rules and procedures governing all aspects of exploration and exploitation, amounting virtually to a "mining code"; making no mention of conditions of exploration and exploitation in the Convention, thus leaving the authority entirely free to determine conditions of exploration and exploitation in the light of prevailing circumstances; and including in the Convention certain fundamental norms which would constitute a framework within which exploration and exploitation would take place, the authority being empowered to establish detailed conditions of exploration and exploitation within that framework. There was apparently no desire either to burden the Convention with detailed conditions or to delete all reference to conditions. There thus seemed to be substantial agreement that the Convention should contain certain basic conditions, rules or regulations, either as articles in the body of the instrument or as an annex or

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(Mr. Pinto, Sri Lanka)

appendix to it. The issue before the Committee had therefore been reduced to determining the scope and content of those basic conditions, rules or regulations.

At the commencement of the discussion in the informal meetings the Committee had had before it an anonymous working paper, Conference Room Paper No. 6, dated 7 August 1974, entitled "Conditions of exploration and exploitation", which contained no more than a list of the main items on which members of the Committee might consider drafting texts. Three further substantive papers had then been submitted to the Committee and discussion had proceeded on the basis of those documents: A/CONF.62/C.1/L.6, Conference Room Paper No. 7, and A/CONF.62/C.1/L.8. On the last day of discussion there had been some indication that more proposals might be submitted. He had taken the liberty of assuring the members that any delegation would be free to present proposals at any time to the Committee or to any formal or informal forum it might establish and have them discussed and taken into consideration in arriving at a final result.

He would not summarize the relatively short but quite substantial debate that had been held, but would make some observations of a general character. In a sense, the opposing points of view had long been before the Committee, and over the past two years points of difference had been brought into sharper focus. Areas of disagreement had been narrowed, not in the sense of bringing opposite sides closer together but in the sense of determining precisely where they were still far apart. The two subjects dealt with in some detail - who might explore the area, and conditions of exploration and exploitation - were the most crucial issues before the Committee and perhaps even before the Conference itself.

In his report at the 11th meeting, he had suggested that two broad issues lay at the root of the differences in the Committee: the issue of control by the authority over sea-bed operations and the issue of the authority's discretionary power - generally framed in terms of a principle of "non-discrimination" - which had to do essentially with access to sea-bed minerals considered vital by some countries. That was where the process of negotiation must begin if the Committee was to be successful in its efforts. The existing division did not have to do with exclusion from or inclusion in the Convention of detailed rules of greater or lesser technical complexity, but essentially, on the one hand, with the degree of control the authority was to exercise over those entities which would carry out operations on the sea-bed and, on the other hand, with

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the extent to which the authority would be circumscribed by the terms of the Convention in the exercise of its discretion. In his view, those were the basic issues to be faced. The four alternative versions of article 9 of the draft Convention in document A/CONF.62/C.1/L.3 and the three papers on conditions of exploration and exploitation clearly demonstrated the opposing views. The Committee had established the opposites of the dialectic and was about to commence the task of unifying and reconciling them.

It seemed to him that the paper submitted by the United States (A/CONF.62/C.1/L.6) and the eight-Power draft (A/CONF.62/C.1/L.8) had much in common, while the proposal in the working paper introduced at the informal meetings on behalf of the Group of 77 stood on its own and in many respects, though by no means all, in opposition to the other two proposals. There were, of course, differences of presentation, organization and scope between the drafts submitted by the United States and the eight-Powers respectively, but they were fundamentally similar in providing that the role of the authority should be regulatory rather than controlling. The authority was given substantial regulatory powers, but control over an operation would seem to lie more with the operator himself or, in the case of the United States, to be divided between the operator and a [illegible] sponsoring State. It could be, and indeed had been, argued that the authority should not have too much control since such control could all too easily degenerate into interference and lead to a reduction in efficiency in the exploitation of the common heritage of mankind; the problem was to determine how much was too much.

The draft submitted by the Group of 77, on the other hand, categorically required that all contracts, joint ventures or any other such form of association entered into by the authority should ensure the direct and effective control of the authority at all times, through appropriate institutional arrangements. The need for the authority to maintain control over all stages of sea-bed operations was so essential to the States concerned that that requirement was already embodied in draft article 9 of document A/CONF.62/C.1/L.3, in accordance with which all activities were to be conducted either directly by the authority or at its discretion through other entities which would then be acting on its behalf, subject always to its control. It could be argued that the need to give the authority such power derived from unhappy experiences at the national level with the so-called multinational corporations and that the fact that the authority would be required to retain such powers of control did not mean that it would actually use them and certainly not that it would abuse them so as to allow the efficiency of particular operations to be impaired.

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(Mr. Pinto, Sri Lanka)

While the draft prepared by the Group of 77 required specifically in paragraphs 4 and 9 that the authority should have control and clearly implied it in paragraph 7, the other two drafts - in anticipation, it would seem, of proposals for such broad powers and in an effort to forestall them - provided specifically for several controls at particular levels. Both the United States draft and the eight-Power draft provided that the authority should maintain a regulatory interest in operations through certain performance criteria such as the requirements for periodic expenditures, submission of data, commencement of exploitation in a specified period, non-interruption of performance and relinquishment of areas. The fact that the draft submitted by the Group of 77 did not mention those types of requirements, which reflected acknowledgement of the interest of the authority as the administrator of the common heritage of mankind, did not, of course, mean that the sponsoring States could not themselves contemplate such basic requirements; what it meant was that they felt it unnecessary to specify such requirements in the Convention since they might be considered matters of detail which an authority, vested with over-all powers of control, would legislate in due course. One particular regulatory power was, however, mentioned in paragraph 16 of the Group of 77 draft, namely the power of the authority to apply the provisions of the Convention relating to regulation of production.

Regarding the relative weight to be attached to the two basic issues, the issue of control by the authority over sea-bed operations and the issue of the authority's discretionary power, one might be tempted to say that the latter far outweighed the former. However, the two were interrelated and if the question of how to orient or limit discretionary powers was resolved there would be no difficulty in resolving the issue of control.

The United States draft laid considerable emphasis on the requirement that all specified activities should be conducted in accordance with the Convention and the regulations contained in it and with two other categories of instruments which must themselves be in strict conformity with that Convention and those regulations, namely, supplementary regulations promulgated by the authority and the legal arrangements governing the activity concerned. The embodiment in the Convention of definite limits to the exercise of the authority's discretionary powers, and subsequent emphasis on the Convention's primacy, would make it possible to safeguard against

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uncontrolled development of the authority's power under the Convention in directions that were not considered constructive or positive; in that connexion he referred to article I of the United States draft. The conditions emphasized in the United States paper - that qualified entities must be entitled to enter into legal relationships with the authority granting them the right to mine (art. IV, para. 1); that the general rule should be that the qualified applicant first to apply should be granted the right to mine (art. IV, para. 5); that the right to mine should comprise two connected phases without judgement as to performance by the authority interposed between them (art. V, para. 1); and that there should be no suspension of the right to mine except after adjudication by a tribunal and in accordance with its orders and decisions (art. VIII) - might be regarded as safeguards sought because of apprehensions that discriminatory or arbitrary action by the authority might deprive States and their nationals possessing the necessary technology and financial capacity of access to the minerals needed to sustain economic growth. The inclusion of such safeguards and the concept of a generally less obtrusive authority which went with them would establish a climate of confidence that would attract investors from the developed countries, who alone could put together the technology and expertise necessary to make a reality of sea-bed exploitation in the very near future with benefits for all. The eight-Power draft, though not so explicit in its terms, also appeared to be based on a similar approach.

The preoccupations reflected in the draft submitted by the Group of 77, however, were different. While it recognized that security of tenure was essential in order to attract investment in the immediate future, and provided for it in paragraph 10, it projected the concept of a totally new institution conscious of possessing potentially extensive wealth, conscious of its role as the custodian of that wealth on behalf of all mankind, and determined not to let it fall a prey to those who acted for selfish ends. It was inspired by the spirit of variant B of draft article 9, which contemplated that the true role of the authority would be that of the sole representative of mankind in relation to the sea-bed and its resources and the sole exploiter of those resources. However, lacking financial and technical resources at present and determined to commence functioning immediately, it would act through those who possessed the requisite finance and technology.

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While taking account of the need to establish appropriate procedures and prescribe qualifications on the basis of which applications for contracts might be made, and providing that the selection of contractors would be made on a competitive basis, paragraph 6 of the Group of 77 text seemed to foreshadow one type of preferential treatment, i.e., that due weight would be given, other things being equal, to applicants which offered the widest possible direct participation by developing countries, particularly those which were land-locked. That should not, however, be regarded as a form of discrimination, since it was simply one of the rules of the game, known and accepted beforehand. A similar concern over the disadvantages of the developing countries was reflected in paragraph 15, providing for transfer of technology, expertise and data to the authority, which would no doubt have the obligation to disseminate such knowledge as widely as possible. Training of personnel was also provided for in paragraph 15 (b). Of the other two texts, only the eight-Power draft made a comparable reference to transfer of technology: article XI provided for participation in the activities envisaged not merely of nationals of developing countries but of nationals of all countries without sea-bed exploration and exploitation capability. It should be noted, however, that other proposals placed before the Committee by the United States did cover that point.

In general, the thrust of the Group of 77 paper was very much toward protecting the common heritage of mankind from unbridled exploitation by the entities through which it expected to have to work in the immediate future. What was basic to the Group of 77 was thus not a concern to allay the apprehensions of investors regarding the use of discretionary powers, which might be left to the authority itself, but rather a desire to safeguard the resources of the common heritage and certain long-term interests of the developing countries by giving the authority adequate powers of control. In their opinion the Convention should contain only the rules necessary to orient the authority in that sense; only such conditions or parameters would be considered so basic as to warrant inclusion in the Convention.

Although the United States and eight-Power drafts contained considerably more technical detail than the Group of 77 paper, it was not yet clear to what extent such detail was considered of fundamental importance, whether in terms of safeguards concerning the two basic issues or for other reasons. Assuming that such figures as that relating to the maximum contract area were of fundamental importance and assuming a basically similar approach, the difference in magnitude of that area contemplated

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in the United States paper and in the eight-Power paper was difficult to explain; both papers recognized two basic categories of minerals described in virtually identical terms, but for category I minerals the United States paper prescribed a maximum contract area of 300 square kilometres, while the eight-Power paper prescribed an area of 9,000 square kilometres, and for category II minerals the United States paper prescribed a maximum area of 30,000 square kilometres, while the eight-Power paper prescribed 60,000 square kilometres. Moreover, no maximum number of legal arrangements per applicant was contemplated in the United States paper, whereby article IV of the eight-Power paper specified a maximum of six contracts per applicant. It might well be questioned whether an essential relationship did in fact exist between maximum contract area and category of mineral and, if so, whether the prevailing approach was sufficiently widely agreed upon as to warrant inclusion in the Convention. If it was to be included, an explanation of the wide disparity would be welcome, since otherwise it would be difficult to persuade those who were currently reluctant to include any technical detail in the Convention either that such figures were sufficiently widely accepted at the present time or that they were of such fundamental importance as to warrant inclusion.

He had not attempted an exhaustive analysis of the papers before the Committee, but had commented only on what he considered differences of approach on the two key issues of control by the authority and exercise of its discretionary powers. He was convinced that all members would proceed with the work of the Committee with the same goal in mind, namely, the early establishment of an authority so structured as to be able to function immediately and produce within a short time the benefits that all countries desired. In order to do that, concessions would no doubt be necessary on all sides. It might be desirable to include provisions in the constituent instruments of the authority that would encourage the participation of investors; it should be borne in mind that investment no longer flowed only from the developing countries but that several developing countries now had large sums to invest, and the new institution should be one in which all investors would feel encouraged to invest. On the other hand, it should also be recognized that the role of the authority as custodian of the common heritage was important and that many had a vision of the authority as a new type of organization which would be endowed with powers to protect the sea-bed's wealth from exploitation for purely selfish ends and would function democratically and take fair and reasonable decisions. Certain controls by such an organization might

(Mr. Pinto, Sri Lanka)

have to be accepted on trust, even though they might appear unprecedented. In that way a way could be found to unify and reconcile the opposite views. Some encouragement could be drawn from the view expressed by several delegations that the papers they had submitted were not final but were intended to serve as bases for discussion and negotiation.

The third main issue before the Committee was the economic aspects of sea-bed exploitation; it had been discussed by the Committee at formal meetings and at the informal seminar, and the Chairman of the Committee had now summarized the debate. He suggested that it would be useful if delegations were encouraged to submit as soon as possible draft treaty articles on that matter. Two possible areas that might be examined in that connexion were draft article 10 in document A/CONF.62/C.1/L.3 and draft article XLVII in document A/9021, vol. II (p. 156) on a possible Planning Commission. Presentation of draft texts at the current session of the Conference would mean that texts on every important item would be before the next session of the Conference, ready for negotiation.

He congratulated the Committee on the work accomplished in its informal meetings up to the present time, noting that the spirit had so far been one of genuine co-operation, free from acrimony. He thanked all representatives who had introduced texts.

Any views he had expressed were his own, and were not binding on any delegation.

Mr. FONSECA (Colombia) said that at the 11th meeting of the Committee he had submitted, on behalf of the Group of 77, a document adopted by consensus by the Group containing variant B of article 9 (A/CONF.62/C.1/L.3). The achievement of that consensus by the developing countries on the subject which had been described as the most important item before the Conference had been debated at length in the informal meetings of the Committee.

Many delegations from developed countries recognized that the variant submitted by the Group of 77 contained positive, balanced and flexible elements and constituted a new phase in the process of negotiation. Those delegations had emphasized the need to discuss the question of the conditions which should govern exploitation in the area beyond national jurisdiction, and some of them had expressed the view that the Convention should contain detailed rules and regulations in that respect, a criterion which was not shared by the majority of delegations. In an effort to achieve a common position, the Group of 77 had set up a drafting group under the chairmanship of the representative

(Mr. Fonseca, Colombia)

of Peru. The drafting group had prepared a text which represented the consensus in the Group of 77 with regard to the conditions of exploration and exploitation (A/CONF.62/C.1/L.7) and which he was presenting to the Committee for consideration.

The document, entitled "Basic Conditions" covered activities in relation to exploration and exploitation which, in the view of the Group, meant all aspects - from research to marketing. The Group considered that it was not the task of the present Conference to include "rules and regulations" or "operational conditions" in the Convention. It held the view that those rules and standards should be drawn up by the future Authority. Only the principles and basic conditions defining and delimiting the regulatory power of the Authority should be included in the Convention. The Authority would issue appropriate rules and regulations in strict conformity with the basic conditions contained in document A/CONF.62/C.1/L.7 and in the Convention. In presenting that document, the Group of 77 was taking no position with regard to where - in the body of the Convention or possibly in an appendix - those basic conditions should appear. The basic conditions enumerated in the document had been drafted with a view to safeguarding the principle embodied in paragraph 1 of draft article 9 under which the Authority would conduct all the activities in the zone directly, and with particular reference to the provisions of paragraph 2 of that draft article, which specified the exceptions which could be made to that direct control.

Referring to specific points in document A/CONF.62/C.1/L.7, he emphasized that the term "resources" in paragraph 1 referred to in situ resources, that is, resources existing in the zone prior to any exploitation. The purpose of the provisions of paragraph 3 was to establish clearly the exclusive power of the Authority to determine the part or parts of the area in which activities relating to exploration and exploitation might be conducted; in other words, the determination of exploitable areas could not be consigned to third parties. Paragraph 4 was an elaboration of the provisions of paragraph 2 of draft article 9. It defined the meaning of the term "association" in variant B of article 9 by specifying that the Authority should exercise direct and effective control in any form of association it entered into including joint ventures, through appropriate institutional arrangements including an appropriate reporting system, access to operations by representatives of the Authority and their participation in those operations and the establishment of properly constituted organs. Under the terms of paragraph 5, the Authority would have the power to determine whether operations should be carried out in one or more stages. The stages enumerated should not be considered exhaustive, but merely indicative of the possible scope of the Authority, nor should the order in which they had been listed be regarded as fixed.

(Mr. Fonseca, Colombia)

The Group considered that it was necessary to establish certain requirements with regard to the procedure for applications by third parties to carry out exploitation of sea-bed resources. Paragraph 6 contained provisions to that end, with particular reference to the need for direct participation by developing countries, particularly the land-locked among them.

Paragraph 7 established the general principle that a contractor who had satisfactorily fulfilled his contract in one stage of an operation should have priority in the award of a contract by the Authority for a further stage of operations, subject to the provisions of paragraph 6.

Paragraph 8 stipulated that the rights and obligations arising out of a contract could not be transferred except with the consent of the Authority and in accordance with its rules and regulations, and paragraph 9 empowered the Authority to enter into joint ventures or other such forms of association with third parties, provided that it retained both financial and administrative control in such ventures.

Paragraph 10 gave concrete expression to the general principle that a contractor should enjoy the rights stipulated in the contract provided he did not violate the Convention and the rules and regulations laid down by the Authority, while paragraph 11 provided for cases of a radical change in circumstances or force majeure, which might require action on the part of the Authority. It was the consensus of the Group of 77 that in view of the lengthy period covered by mining contracts and the rapid advances in technology, the Authority had to have that safeguard.

Paragraphs 12, 13 and 14 made explicit what had been said in general terms in previous statements on behalf of the Group of 77, namely that the Authority should not incur any risk, responsibility or financial liability arising out of the conduct of operations under contract to third parties, joint ventures or other such associations. Under paragraph 14, the Authority could use, as a means of payment, such systems as production-sharing and profit-sharing based on the profits and production from the exploitation of the resources of the area.

Paragraph 15 enumerated conditions which, in the view of the Group of 77, were essential in order to give effect to the principle of the common heritage of mankind since the process for effecting the transfer of technology it stipulated strengthened the position both of the Authority and of the developing countries.

(Mr. Fonseca, Colombia)

There was a consensus in the Group of 77 that production regulations should be included in article 10 of the régime and in the powers of the Authority. Paragraph 16 had been drafted with a view to safeguarding the powers of the Authority in that respect under the Convention. Finally, paragraph 17 was self-explanatory.

He emphasized that the basic conditions for exploration and exploitation submitted by the Group of 77 were without prejudice to the powers of the Authority or to the provisions of the Convention.

The document submitted by the Group of 77 represented the second consensus achieved by the Group during the Conference and was based on the Declaration of Principles contained in resolution 2749 (XXV). Its provisions were balanced and flexible and had received the support of over 100 States including China, Romania, Spain, Albania and Norway and Sweden. Without deviating from their position or allowing themselves to be influenced by rumours and the insinuations of a delegation that some Powers would be prepared to take unilateral action in view of the scant results which had so far been achieved by the Conference, the developing countries had submitted proposals with a view to achieving a compromise solution as a clear demonstration of their will to negotiate equitable conditions for the exploration and exploitation of the resources of the common heritage of mankind.

Mr. THOMPSON-FLORES (Brazil) said that he had listened with interest to the report of the Chairman of the informal meetings and the proposals submitted on behalf of the Group of 77 concerning conditions of exploitation. Proposals had also been submitted by the United States (A/CONF.62/C.1/L.6) and by eight European Powers (A/CONF.62/C.1/L.8) on that item. At its informal meetings, the Committee had also considered a set of 21 draft articles dealing with the status, scope and basic provisions of the régime.

It was the view of his delegation that the time for debate was over and that the Committee must enter into the negotiating phase. He proposed that a decision should be taken at the present meeting to create a negotiating group to engage in immediate negotiations with regard to the system of operations in the area, the 21 articles concerning the régime, particularly article 9, and also the conditions of exploration and exploitation. He proposed Mr. Pinto (Sri Lanka) for the position

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(Mr. Thompson-Flores, Brazil)

of Chairman of that group. Delegations should be represented in the negotiating group and contact groups should be set up to take account of regional and other interests, but the group should be open to participation by all delegations. He further proposed that the Chairman should consult with the Chairmen of the regional groups and other interested delegations with regard to the composition of the negotiating group. The question of the régime had been dealt with exhaustively; all delegations had stated their positions and virtually all first stage proposals had been submitted. It was essential that the Committee engage in concrete negotiations to ensure that the present Conference established machinery to decide on a future régime.

Mr. HYERA (United Republic of Tanzania) supported the proposal by the representative of Brazil and endorsed with pride and satisfaction the nomination of Mr. Pinto as Chairman of the proposed negotiating group.

The CHAIRMAN said that as the proposal by the representative of Brazil had not been opposed, he took it that the Committee approved the establishment of a negotiating group and the appointment of Mr. Pinto as Chairman of that group.

It was so decided.

The CHAIRMAN invited heads of regional groups to consult with him concerning the composition of the negotiating group.

Mr. RATINER (United States of America) said that his delegation considered that the issue of the conditions of deep sea-bed exploitation were critical to the future work of the Committee. He expressed satisfaction that the Committee as a whole had accepted that the fundamental conditions of exploitation must be embodied in the Convention.

The principal interest of his delegation in the Committee was to negotiate a Convention that would guarantee prompt, effective and economic recovery of the mineral resources of the international sea-bed area on fair and equitable conditions for all. That guarantee was fully compatible with the concept of the common heritage of mankind, was the most efficient way of ensuring that all nations would participate in the development of those resources and would also facilitate negotiations of a variety of other important objectives sought by many countries.

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(Mr. Ratiner, United States)

The key to the encouragement of development of the mineral resources beyond national jurisdiction was the establishment of reasonable conditions of investment and operation which would attract management, technological and financial resources.

He introduced the working paper entitled "Draft Appendix of the Law of the Sea Treaty concerning Mineral Resource Development in the International Sea-Bed Area" (A/CONF.62/C.1/L.6) and said that, having analysed other draft papers on the fundamental conditions of exploitation, his delegation wished to elaborate its views on that item. With regard to the nature of the exploitation rights granted by the Authority, some delegations had suggested that the basic guidelines used by the Authority could be found in the treaty text of the régime and that those provisions, roughly corresponding to the Declaration of Principles, would constitute adequate guidance to the Authority in exercising its functions with respect to resource exploitation. He expressed satisfaction that there appeared to be an emerging consensus in the Committee that the fundamental conditions of exploitation should be expressed in greater detail. His delegation considered that the parameters of negotiation on that issue were becoming more clearly defined, which was an extremely important development in the work of the Committee.

Several critical issues concerning the fundamental condition of exploitation must be considered in order to ensure that the convention protected the access of all States to deep sea-bed minerals. Firstly, the fundamental conditions of exploitation and any future rules must be uniform and non-discriminatory in application. Secondly, the conditions of exploitation must ensure that all who wished to engage in mining were allowed to do so, provided they met and continued to comply with objective criteria set forth in the convention. His delegation believed that several delegations had criticized that concept for two basic reasons: firstly, several industrialized and some other countries had implied that all good mining areas might be used up by the most technologically advanced countries. It was the view of his delegation that on the basis of available evidence that view was without foundation: the extent of the resource far exceeded the amount of mining which could be economically undertaken by any country or company. Moreover, his delegation favoured the utilization of certain commonly recognized methods for precluding the taking and holding of rights to mine which could not in a reasonably short period be justified by major investment and full-scale commercial production and was of the view that failure to comply with such

(Mr. Ratiner, United States)

conditions should result in forfeiture of rights. Secondly, a few countries, land-based producers, believed that by restricting the area that could be exploited at any one time and the number of countries and companies which could enter into legal relationship with the Authority for exploration and exploitation, they would be able to prevent downward pressure on prices for the minerals they produced. His delegation had presented data in support of the view that there was no significant risk of downward pressure on prices and several speakers from both developing and developed countries had emphasized the important interest of consumers everywhere in that matter. In that connexion, he reiterated the views expressed by his delegation at the 13th meeting of the Committee and its statement in the informal meetings indicating that it was not prepared to negotiate the question of economic implications in each article of the convention or in each of the basic conditions of exploitation. Criticism of his delegation's position which was founded on economic implications considerations should be reserved for the negotiation of a single convention article on that question which would take account of both producer and consumer interests. His delegation continued to adhere strongly to the view that in order to ensure fair and secure access by all States to the mineral resources of the area, it was not reasonable or proper to impose restrictions on the area available for exploitation or the number of such areas which a particular country or company might be permitted to mine pursuant to legal arrangements with the Authority. Moreover, such restrictions tended to limit the tangible and intangible benefits deriving from such exploitation to the international community as a whole, that is, not only revenues but the benefits related to technological progress, the transfer of knowledge and skills and the greater availability of those resources to all consumers. Thirdly, his delegation believed that a general consensus had emerged during the present session of the Conference which recognized the importance of providing for security of investment in order to ensure the success of the Authority and access for all nations to sea-bed resources. The fundamental conditions of exploitation must ensure that the basic contractual terms upon which an operator had decided to make his investment would not be altered during the period of his contract with the Authority. Fourthly, in view of the magnitude of the investment required and the risks involved, the conditions of exploitation must clearly state that the Authority would allow entities at their option to proceed automatically from the initial phases of mineral development to the final phases where remuneration occurred. Fifthly, the conditions of exploitation should only apply to

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commercial activities and not to transportation by sea, processing and marketing or scientific research. Finally, the basic policy objectives of the Authority must be clearly stated in the fundamental conditions of exploitation in order to make it possible to assess whether supplementary regulations promulgated by the Authority were consistent with the convention. In addition to the items already listed, such basic policy objectives would include protection of the marine environment and guarantees that mining would be conducted safely, ensuring that miners were diligent and serious in their efforts to extract resources, acquisition by the Authority of efficient and reliable data to ensure effective performance of its functions, promotion of the technological advancement of developing countries, allowance for the meaningful participation in exploitation by the States which did not at present have the necessary technological and financial capacity for such participation and provision for the sharing of proceeds on an equitable basis.

Conditions of exploitation were part of a larger system which must protect the integrity of the Authority and the interests of those working with it. To ensure adequate opportunity for adjustment of the system to meet changing technology and cope with new information, the Authority must contain a fair and responsive rule-making system along the lines of that used with great success by the International Civil Aviation Organization. Rules should be drafted by a specialized subsidiary organ, forwarded to all States for review and, if, after a period of say, 90 days, less than one third of the members of the Authority had objected, they would become binding. That system would provide maximum opportunity for expert review in the Authority and by Governments and avoid the risk of undue influence by one or another of the organs of the Authority. Whatever discretion was given to the Authority, his delegation emphasized the need for a system of checks and balances. The dispute settlement organ must play an important role in the process of sea-bed development, and the executive organ must be composed so as to fairly reflect the balance of interests.

It was necessary to adopt conditions of exploitation that the Authority would include in its legal arrangements when it came into being. In an attempt to facilitate the work of the Conference, his delegation had attempted to outline those issues which it considered to be of the greatest importance to the negotiation of conditions of exploitation and had stated its views in more conceptual terms than could be done through the presentation of precise treaty texts.

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In conclusion, he expressed his appreciation for the personal summary presented by the Chairman at the request of his delegation, on the economic implications of sea-bed exploration and exploitation. However, he wished to indicate that in the view of his delegation, considerably more balance had existed in the discussions, particularly with regard to the interests of consumer countries than had been reflected in the Chairman's personal summary. His own personal assessment was that statements by members of the Committee had reflected an awareness of the interests and problems of consumer countries, particularly consumer developing countries, as well as the need to provide measures to protect the interests of developing producer countries.

The CHAIRMAN invited the representative of the United States to read his personal summary. It was his view that the interests of both consumer and producer countries could best be dealt with in the Authority. He had therefore confined his summary to the possible adverse economic effects of the exploitation of sea-bed resources and the measures which might be taken to alleviate such effects, and to suggesting the creation of machinery within the Authority to deal with all global problems.

Miss MARTIN-SANE (France) thought that the excellent report of the Chairman of the informal meetings should be reproduced in extenso in the summary record.

The French delegation was one of eight which had submitted a draft of an annex to the convention (document A/CONF.62/C.1/L.8) because it felt that it was essential to spell out the conditions of exploration and exploitation in any such convention. What was needed was a kind of charter of the mutual rights and obligations of the international authority and contractors. It was inconceivable for mankind to embark upon such an unprecedented adventure in its history as the exploitation of the resources of the sea-bed without specific guidelines covering the activities of prospection, evaluation, and exploitation. For those reasons, the text prepared by the Group of 77 and circulated as document A/CONF.62/C.1/L.7 was unsatisfactory.

The eight sponsors of document A/CONF.62/C.1/L.8 had not intended to furnish an exhaustive list of conditions governing activities in the international sea-bed area, but merely to provide the Committee with a concrete basis for reflection.

There appeared to be a certain amount of confusion concerning section VII of document A/CONF.62/C.1/L.8 with regard to the size of the areas to be granted for

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(Miss Martin-Sane, France)

exploration. The figures for the maximum surface of those areas in that section did not take into account the relinquishment of one third of that area provided for in section IX.

The three texts (A/CONF.62/C.1/L.6, L.7, and L.8) which had been submitted to the Committee, and any others that might be submitted, would provide a basis for a discussion which should continue up to the beginning of the next session. The time for general statements had long since passed.

Her delegation had some comments to make with regard to the President's statement at the beginning of the meeting, but in view of his reply to the representative of the United States, it preferred to defer its statement until it had had time to study carefully the text of the President's remarks.

The CHAIRMAN said that various delegations had communicated to the Chair their wish that all the statements at the present meeting should be included in extenso in the summary record in view of the importance of the issues involved and of the statements themselves.

It was so decided.

Mr. MOTT (Australia), Rapporteur, said that he wished to consult the Committee with regard to the kind of statement it wished him to prepare to summarize the Committee's work before the Conference resumed plenary meetings. He preferred not to use the word "report" because of its formal connotations and because of the procedure of acceptance it implied. What he had in mind was something less formal, along the lines of a statement or an account of the Committee's activities. Such a format would be more appropriate in view of the fact that the Committee had reached an intermediate stage in its deliberations. As far as he knew, no delegation favoured a comprehensive or substantive statement along the lines of previous Sea-Bed Committee reports, which incorporated lengthy summaries of the Committee's discussions. The statement he was proposing would by definition be non-controversial and would permit the Committee to continue its work without getting caught up in argument concerning the nature of the report.

One of the problems he would have to deal with was the fact that much work had been done in informal meetings. On the other hand, several important statements had been made at regular meetings of the Committee by the Chairman, the Chairman of the

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(Mr. Mott, Australia)

informal meetings and various delegations, and they should of course be reflected in the Rapporteur's statement. Furthermore, several documents had been introduced in the Committee. There was therefore no lack of material. The contents of the statement would include the establishment of the Committee, its mandate; its documentation, and a summary of its work covering the general discussion, the discussion on the economic implications of the mining of minerals from the sea-bed, the establishment of the negotiating group, and the work of the informal meetings. It would also include some form of recommendation for the Committee to complete its work at the future session of the Conference. The statement would be presented to the Conference in plenary meeting for incorporation into the general report.

In accordance with a practice which had worked fairly well in the past, he intended to circulate a draft of the statement soon, in order to facilitate its acceptance. It should meet with general approval since it would be factual in nature. The need for a formal paragraph-by-paragraph acceptance of the statement might therefore be avoided. He requested delegations which had any problems with regard to the statement he was proposing to prepare to consult with him as soon as possible.

Mr. DE SOTO (Peru) said that he did not propose to deal with a matter of substance but rather with a point of order in connexion with article 37 of the rules of procedure (A/CONF.62/30/Rev.1).

The representative of Brazil had made a proposal for the establishment of a negotiating group to promote a decision on the system of exploitation to be applied in the international sea-bed area. That was an excellent proposal, and the entire Committee seemed to agree that the time for such negotiations had come. However, several obstacles were standing in the say of complete agreement. First of all, with only eight working days left, time was running out. Furthermore, several delegations appeared to be either unable or unwilling to make decisions now and appeared to wish to wait until the next session instead. His delegation had already underlined the need to resolve the questions of the system of exploitation and article 9 at the present session in Caracas. Since it was already manifest that certain positions were non-negotiable, all efforts to reach a general agreement could be considered to have failed. He therefore proposed that the Committee, parallel to the work of the negotiating group, consider the advisability of setting in motion the

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(Mr. De Soto, Peru)

decision-making procedure laid down in article 37 of the rules of procedure in an attempt to obtain a decision with regard to the system of exploitation and article 9. He had asked to make a statement at the present moment in order to give the members of the Committee some time to reflect upon his proposal before the next meeting.

The CHAIRMAN said that when a formal proposal was before the Committee he would of course apply all the relevant provisions of the rules of procedure. However, the Committee would not proceed to a vote until it had been determined that all attempts to reach a general agreement had failed.

Mr. ALLOUANE (Algeria), speaking in support of the proposal made by the representative of Peru said that the time remaining, including Saturdays and Sundays if necessary, should be devoted to reaching an agreement on article 9. If by 28 August no agreement had been reached, the provisions of article 37, paragraph 2 (a), should be applied.

Mr. QADRUDDIN (Pakistan) and Mr. KEITA (Guinea) also supported the statement made by the representative of Peru.

Mr. RATINER (United States of America) said that in the view of his delegation, the representatives of Peru and Algeria had not spoken on a point of order; in fact, their statements were out of order. They should therefore be excluded from the summary record.

Mr. ALLOUANE (Algeria) emphasized that he had spoken earlier in support of the representative of Peru, and not on a point of order.

The CHAIRMAN said that to his understanding the proposal of the representative of Peru did not require an immediate decision by the Chairman, as provided in article 25 of the rules of procedure. He took it that the representative of Peru had merely reserved his right to invoke the rules of procedure at an appropriate time in the future.

The meeting rose at 6.15 p.m.